



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, ERP, RP, LRE, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated August 23, 2017 ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to complete emergency and regular repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- other unspecified remedies; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The two tenants (male and female) and the two landlords (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 119 minutes in order to allow both parties to fully present their submissions. I note that the tenants spoke for most of the hearing time, as they submitted the majority of written evidence, and had difficulty going through all of their documents efficiently during the hearing.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants confirmed receipt of the landlords' written evidence package.

In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with landlords' written evidence package. Both parties confirmed they had no objections to the other party's evidence and indicated they were ready to proceed with the hearing.

Issues to be Decided

Are the tenants entitled to the relief requested above?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. I note that there were hundreds of pages of written evidence submitted for this hearing, but much of it was not referenced during the hearing. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2016. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The rental unit is a house. The male tenant continued to reside in the rental unit at the time of this hearing on October 23, 2017, while the female tenant and her four children vacated on August 20, 2017.

The tenants seek compensation totalling \$35,000.00 from the landlords. They also seek to recover the \$100.00 application filing fee.

The tenants provided a detailed monetary order worksheet, which indicates a breakdown for their claims, totalling \$32,136.43:

- \$13,069.46 quote to move their household goods from the rental unit;
- \$450.00 for a home inspection report;
- \$1,054.41 for a mold report;
- \$14,000.00 for a rent reimbursement from August 2016 to September 2017;
- \$704.21 for replacement cellular phones;
- \$469.88 for replacement winter clothes;
- \$502.30 for replacement shoes and other goods;
- \$323.48 for replacement winter boots;

- \$160.52 for replacement winter coats;
- \$404.70 for replacement guitar and toys;
- \$134.39 for a replacement cat house and scratcher;
- \$276.05 for replacement clothes;
- \$243.14 for replacement clothes;
- \$165.90 for replacement clothes;
- \$177.99 for replacement clothes.

The tenants claimed that they suffered serious losses due to mold in the rental unit from historical water leaks in the house that the landlords failed to disclose before the tenants moved in. They said that they noticed a sewer smell shortly after moving in but thought it was from the neighbour's property. They claimed that around January 2017, approximately six months after moving in, they realized that mold was rampant in the rental unit. They stated that they had a mold report, dated August 21, 2017, commissioned after an inspection and it revealed that the rental unit was "not fit for occupancy" because there was a lot of mold in the house, particularly the basement. They said that one of the recommendations was to call the provincial safety authority but when they did, they were told it was outside City limits so they could not help. They said that the landlords refused to pay for the mold report, despite their requests. The landlords denied this, stating they would have paid if the tenants had asked. The tenants mainly referenced only the conclusion of their mold report, which was provided as screenshots from a cell phone, rather than a printed paper copy of a signed report.

The female tenant claimed that she left the rental unit with her four children in order to stay in a motel and then a weekly rental house until a permanent place was found. She stated that the items noted above in the monetary breakdown include replacement items for her and her four children when they left the rental unit without any items due to mold poisoning. She claimed that she went to the hospital first and then to a motel and weekly home rentals in order to avoid the toxic mold. The male tenant claimed that he could not just leave the rental unit on short notice because his work place is near the rental unit and his truck and other possessions are still in the rental unit.

The male tenant claimed that he has been attempting to detoxify and store various belongings in order to transport them to a new home. He said that many items have mold on them and he will not be able to bring them with him when he vacates the rental unit. The tenants provided a quote for \$13,069.46 to move their household goods from the rental unit to a new home, with the exception of "soft goods" which they described as clothing and furniture because the company stated these could not be moved due to

mold poisoning. The male tenant stated that he has been unsuccessfully attempting to get the basement dry with heat.

The landlords claimed that the tenants let water come into the basement, failed to dry their goods and the basement area, and failed to promptly notify the landlords of water leaking. They said that the tenants failed to purchase tenants' insurance which would have covered their losses. The tenants confirmed they did not purchase their own tenants' insurance as a personal choice. The landlords stated that they fixed the cracks in the basement walls where the tenants complained of water seeping in and the tenants complained of the materials used because it was cheaper than the \$12,000.00 that the tenants believed they should have paid. The landlords stated that they replaced a sump pump as well and they heard nothing further from the tenants regarding water in the basement. The landlords said that they spoke with the tenants in June and July 2017 regarding non-payment of rent, and they heard nothing about water in the basement. In August 2017, the landlords claimed that they made repairs to the sewer line with a professional plumber rather than the tenants' mechanic, and at this time they did not hear anything about water in the basement.

The landlords claimed that they were told by the tenants about water coming into the basement and the tenants' intention to vacate the rental unit on August 10, 2017. They stated that they personally inspected the rental unit on August 12, 2017, had a restoration company inspect on August 14, 2017 that could not find the source of the water leak, and then had another contractor attempt to find the source on August 17, 2017. The landlords claimed that they issued a 2 Month Notice to the tenants in order to complete repairs to address these mold issues, particularly after the female tenant was impeding an assessment by the inspector on August 17, 2017, such that the same issue occurred on August 27, 2017 when a contractor came to address the issues.

After recommendations were made for an air quality test on September 21, 2017, the landlords claimed that they had their own mold inspection completed on October 3, 2017. They said that they asked for a report after the inspection because the tenants refused to share the results of their own mold report without payment from the landlords first. The landlords said that they did not pay because the tenants were asking for more than the cost of the report, after they called the company where the tenants had the report done. The tenants claimed that the landlords' own mold report indicates a "historical" problem with water leaks and shows there is mold in the rental unit. The landlords claimed that many of the recommendations in their mold report are for areas to be wiped down with detergent, while the basement requires more work including HEPA-vacuuming.

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and an order. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of the tenants' application.

Both parties agreed to the following final and binding settlement of portions of the tenants' application:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 31, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that this tenancy is ending pursuant to the landlords' 2 Month Notice, dated August 23, 2017;
3. The landlords agreed that the tenants are entitled to one month's free rent compensation pursuant to section 51 of the *Act* and the landlords' 2 Month Notice on the following term:
 - a. The tenants have already received one month's free rent from the landlords for the period from October 1 to 31, 2017;
4. The landlords agreed to abide by section 29 of the *Act* by providing the tenants with at least 24 hours' written notice prior to entry into the rental unit;
5. The tenants agreed that they do not require any other orders from the landlords as claimed in their application, aside from monetary compensation.

I made a decision regarding the \$35,000.00 monetary order sought in the tenants' application because the parties were unable to reach a settlement on that issue.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the applicant tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' application for a monetary order for \$35,000.00 without leave to reapply. I find that the tenants failed to prove part 2 of the above damages test that the water leaks and mold are due to the actions or neglect of the landlords.

The tenants did not file an application to deal with the mold issues until September 6, 2017, nine months after they first noticed the mold in January 2017. If the situation were as dire, toxic and life-threatening as they claimed that it was, they would not have waited nine months to ask for emergency and regular repairs to be done. The tenants' application was filed in response to the landlords' 2 Month Notice to end their tenancy, which the tenants had 15 days to dispute, and it was filed 14 days after the date of the August 23, 2017 notice.

I further note that the tenants waited until August 21, 2017, to have a mold inspection and report done in order to assess the mold situation in the rental unit. They then waited additional weeks to file their application on September 6, 2017. Moreover, the female tenant and her four children moved out of the rental unit on August 20, 2017, before receiving the findings of the tenants' mold report on August 21, 2017.

No medical records were provided by the tenants, despite the fact that the female tenant claimed that she and her four children suffered mold poisoning, went to the hospital, and were unable to return to the rental unit to retrieve their belongings which were also poisoned with mold. The tenants also failed to provide photographs of the damage and lost items inside the rental unit, due to the mold, despite the fact that the male tenant was still living there at the time of this hearing. As noted above, if the situation were as dire as the tenants claimed, it would not have taken nine months for five of the six occupants to vacate of the rental unit. The male tenant was still in the rental unit at the time of this hearing on October 23, 2017, claiming that he could not leave on a short-notice basis.

The tenants pointed to a letter, dated August 15, 2017, that they said they sent to the landlords, which notes "basement water and mould" as #2 and "mould" as #5 in their list

of seven total repairs required in the rental unit. The tenants themselves have not prioritized the mold and basement issue as the #1 issue, despite their hospital stays, urgent need to vacate the rental unit and \$35,000.00 worth of losses they say they suffered. Further, this letter was mailed to the landlords after the tenants verbally notified the landlords of the issues and the landlords inspected the unit on August 12 and 14, 2017.

I find that the landlords dealt with the mold issues as soon as reasonably possible after being notified by the tenants that there was a problem. I accept the landlords' testimony that they were not informed of any water leaks by the tenants until August 10, 2017 and they could not have taken any action until this time. The landlords provided a clear and concise timeline as to when they were notified and when they took action. Within days of being notified, the landlords inspected the rental unit personally and had two contractors attend in order to inspect, assess and provide recommendations for remediation work. The landlords commissioned their own mold report because the tenants refused to share the results of their own report without being paid first, despite the fact that they claimed that the situation was so serious and the landlords failed to address it.

Although the landlords' own mold report indicates that there was an elevated level of mold in the basement of the rental unit, the tenants were mainly using the upper main portion of the home, rather than the basement. While the landlords' mold report notes "historic water leaks within the building" as the "likely" cause for the basement mold issues, this does not imply that the landlords caused the previous leaks or failed to deal with them. Historic leaks could have occurred for any reason. I find that the tenants' delay in notifying the landlords about continuous water leakage, which they say occurred since they moved in, and which they were aware of at least in January 2017, contributed to the mold and the resulting damage and losses that the tenants suffered in the rental unit. I find that the landlords are not responsible for these damage and losses.

As the tenants settled a portion of their application and were unsuccessful in the remainder, I find that they are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the

landlord(s) **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on October 31, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on October 31, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to abide by section 29 of the *Act* by providing the tenants with at least 24 hours' written notice prior to entry into the rental unit.

The tenants' application for a monetary order totalling \$35,000.00 and to recover the \$100.00 filing fee is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 02, 2017

Residential Tenancy Branch